

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA DIVISION

TENTATIVE RULINGS

EVENT DATE: 05/13/2015
JUDICIAL OFFICER: Kevin DeNoce

EVENT TIME: 08:20:00 AM

DEPT.: 43

CASE NUM: 56-2014-00461060-CU-NP-VTA

CASE TITLE: P.Q.L INC VS REVOLUTION LIGHTING TECHNOLOGIES INC

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Non-PI/PD/WD tort - Other

EVENT TYPE: Motion to Strike - Punitive and Exemplary Damages

CAUSAL DOCUMENT/DATE FILED: Motion to Strike, 03/12/2015

With respect to the below scheduled tentative ruling, no notice of intent to appear is required. If you wish to submit on the tentative decision, you may submit a telefax to Judge DeNoce's secretary, Hellmi McIntyre at 805-662-6712, stating that you submit on the tentative. Do not call in lieu of sending a telefax, nor should you call to see if your telefax has been received. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence. This case has been assigned to Judge DeNoce for all purposes.

Absent waiver of notice and in the event an order is not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

The court's tentative ruling is as follows:

Sustain the Demurrer regarding the cross-complaint filed by Gene Scott Fein as to the First, Third, and Fourth causes of action with 20 days leave to amend.

Overrule the Demurrer as to the 2nd cause of action.

Order the Motion to Strike off calendar as moot in light of the above rulings.

Discussion:

1st and 3rd causes of action - fraud

Both the 1st and 3rd cause of action are based on the allegation of fraud. The elements of fraud are "(1) misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity (scienter); (3) intent to defraud (i.e., to induce reliance); (4) justifiable reliance; and (5) resulting damage." (citation) (Behnke v. State Farm General Ins. Co. (2011) 196 Cal.App.4th 1443, 1452-53.) Fraud must be pleaded specifically. To survive demurrer, plaintiff must plead facts that "show how, when, where, to whom, and by what means the representations were tendered." (Hamilton v. Greenwich Investors XXVI, LLC (2011) 195 CA4th 1602, 1614.)

The Cross-Complaint fails to identify the actual representation made to cross-complainant Fein (i.e., exactly what was said), allege specifically who made that representation, allege when it was made, where it was made, and how it was made (what means; orally, email, etc.). The Cross-Complainant says that PQL and Sreden implied from their conduct that it was their intention to sell the company, but there is no allegation regarding any of the details of that representation. The fraud alleged here is not pled with the required specificity and therefore the Demurrer is sustained as to both causes of action. **4th cause of action – usury**

The essential elements of usury are: (1) The transaction must be a loan or forbearance; (2) the interest to be paid must exceed the statutory maximum; (3) the loan and interest must be absolutely repayable by the borrower; and (4) the lender must have a willful intent to enter into a usurious transaction. (Ghirardo v. Antonioli (1994) 8 Cal.4th 791, 798.) **Fein has not alleged that Sreden had any willful intent to enter into a usurious transaction. As to the issue of intent, cross-defendants are correct that there is no allegation of intent and therefore the Demurrer to this cause of**

TENTATIVE RULINGS

action is sustained with leave to amend.. **Motion to Strike:**

Given the Court's tentative ruling on the Demurrers, the Motion to Strike is moot and should be taken off-calendar. In any event, the allegations, related to fraud are not properly pled and, accordingly, cannot support punitive damages (i.e., ¶¶20, 28, and Prayer 1(b) and 3(b)). Civil Code §3294(a) permits punitive damages where the defendant is guilty of "oppression, fraud, or malice." Those paragraphs should be stricken. As to ¶47, related to the 7th cause of action, there is an adequately pled violation of Labor Code §206.5 but there are no allegations supporting oppression, fraud, or malice. ¶47 should be stricken as well. None of the allegations support the claims for punitive damages.